4

S.B. CIVIL MISC. APPEAL NO.127/2007.
P.V. Samual Vs. Laxman Singh & Ors.

Date of Order : 21st March 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Parikshit Nayak, for the appellant.

....

BY THE COURT:

By way of this appeal against the award dated 06.01.2006 made by the Motor Accidents Claims Tribunal (Fast Track), Banswara in Claim Case No.74/2005, the injured claimant seeks enhancement over the amount of Rs.4,32,000/- together with interest @ 6% per annum from the date of filing of the claim application awarded by the Tribunal as compensation for the loss suffered by him due to the injuries sustained in a vehicular accident.

The accident occurred on 15.08.2000 near Dhuliya on Malegaon to Indore route when the truck belonging to and driven by the claimant-appellant bearing registration No. RJ03 G 0957 collided with another truck bearing registration No. MP07 G 1488. Because of the accident, the claimant suffered grievous injuries on his person and his left leg was required to be amputated below the knee; and sought compensation against the persons related with the aforesaid truck bearing No. MP07 G 1488 stating his age at 40 years, business as truck operator, and income at Rs.30,000/- per month.

After framing of necessary issues and taking evidence, the Tribunal found the accident to have occurred for rash and negligent driving of the truck bearing registration No. MP07 G 1488 and held the non-applicants liable for compensation.

Taking up quantification of compensation, the Tribunal noticed the assertion of the claimant that he was earning Rs.30,000/- per month from his truck and was depositing Rs.21,870/- towards loan installments; that he spent about Rs.20,000/- on transportation and was required to take two attendants with him; that he spent about Rs.2.50 lacs on treatment and his left leg was amputated and his knee was still discharging pus and blood and would require further treatment; that he was unable to carry on with the work of driving his own truck and would be required to employ a driver at about Rs.5,000/- per month; that he was suffering great difficulties in walking, sitting and in his daily routine. The Tribunal also noticed the statement of AW-3 Dr. S.K. Bhatnagar issuing the certificate Exhibit 21 of 70% disablement with amputation of left leg that the basis of such percentage of disability was not stated in the certificate that did not bear the number and date; and the disability so stated was of the lower limb and not of the whole body.

The Tribunal proceeded to award Rs.30,000/- towards the injuries and related pains and sufferings; Rs.32,000/-

towards treatment expenditure as against the bills of Rs.31,118/-; and Rs.15,000/- towards special diets and transportation. The Tribunal rejected the submission about monthly income of the claimant at Rs.30,000/- for want of corroborative evidence but with reference to the fact that he was registered owner of the truck RJ03 G 0957, took his monthly income at Rs.5,000/- and allowed loss of income for five months at Rs.25,000/-. Looking to the fact that his left leg was required to be amputated below the knee, the Tribunal allowed Rs.1,00,000/- towards loss of future income as the claimant would not be able to carry on with the work of driving the vehicle. The Tribunal took the disablement in proportion of the body at 24%; and with application of multiplier of 16 taking his age at 40 years, assessed pecuniary loss at Rs.2,30,400/- (24% of 5000x12x16); and rounded it off to Rs.2,30,000/-. In this manner, the Tribunal made the award of compensation in the sum of Rs.4,32,000/- and allowed interest @ 6% per annum from the date of filing of the claim application.

Assailing the award aforesaid and seeking enhancement, learned counsel for the appellant contended that the Tribunal has been in error in taking disablement of the claimant-appellant only at 24% in spite of the fact that the medical evidence on record shows his disablement at 70% and estimate of loss of earning capacity has been much on the

lower side. Learned counsel submitted that the Tribunal has erred in not taking the income of the claimant at Rs.30,000/- per month as proved; and has erred in allowing five months' loss of income only at Rs.25,000/-.

Having given a thoughtful consideration to the submissions made by the learned counsel and having examined the record, this Court is satisfied that the amount awarded by the Tribunal towards compensation cannot be said to be lower than that of just compensation admissible in this case; and this appeal does not merit admission.

It is true that by way of certificate Exhibit 21, the medical board comprising of the Medical Jurist and the Medical Officer, Orthopedic Department of Mahatma Gandhi Hospital, Banswara has stated about so-called 70% disablement but then, the said certificate has been issued only upon physical examination of the claimant on 31.08.2004, i.e. after four years from the date of accident; and the said doctors had not treated upon the claimant. The feature of the said document Ex. 21 could be noticed that the findings have been stated in the form that "due to persistent pain & below knee amputation, examinee has permanent physical disability amounting '(E...F)' permanent physical disability of left lower limb." The percentage of disablement though stated at some other figure at the portion marked as 'E to F', noticed in dotted lines

hereinabove, that has been scored out; and the doctor concerned has stated such disablement on the left hand margin of certificate as 'Seventy per cent" on the portion marked 'G to H' in the certificate. The said over-writings/additions respectively at the portions marked 'E to F' and 'G to H' in the certificate Ex.21 purportedly bear the signatures of one of the doctors, i.e. the medical jurist Dr. S.K. Bhatnagar (AW-3) and not of the other doctor said to be comprising the medical board. Even with reference to the Schedule-I to the Workmen's Compensation Act, 1923, it could be noticed that amputation below knee ought to stand with percentage of loss of earning capacity only at about 50%. Then, the said certificate states about the disablement "due to persistent pain and below knee amputation". It is difficult to countenance from the said certificate that the claimant-appellant had suffered disablement resulting in loss of earning capacity at 70%. It may be pointed out that there is another certificate, Ex. 22 issued by Shree Narhari Arogya Kendra (Hospital) stating his disability at 70% of the limb; but the said has not been shown to have been issued by the doctor concerned in discharge of any official duties nor the said doctor has been examined. The said certificate does not bear any date nor could be relied upon for the purpose of assessing disablement of the claimant as it appears from injury report

issued by the said hospital on 07.09.2000 (Ex. 10) that his leg amputation was not carried out at the said hospital where he was treated only after amputation. In the overall fact situation of the case, and the nature of evidence available on record, the Tribunal cannot be said to have erred in putting an estimate on such disablement of the claimant for the purposes of assessing the loss of earning capacity at about 24%.

Even if such estimate as put by the Tribunal of disablement at 24% be taken as an estimate somewhat on the lower side, noticeable it is that the Tribunal has erred, in favour of the appellant, in applying a multiplier of 16 and in failing to consider that he was definitely above 40 years of age on the date of accident; that his age was about 42 years as borne out from the injury report Ex.10 dated 07.09.2000; and that his age was stated at 46 years in the certificate Ex.21 issued on the basis of examination allegedly made on 31.08.2004. Obviously, a multiplier of not more than 15 was to be applied in the present case. Then, the Tribunal has taken monthly income of the victim at Rs.5,000/- though no documentary evidence in proof of income was adduced; and the estimate put by the Tribunal looking to the nature of work of the claimant-appellant does not appear to be an estimate on the lower side; and could only be said to be rather on the higher side. So far the assertion of his income at Rs.30,000/- per

month is concerned, the same remains hollow and baseless and cannot be taken correct for want of cogent corroborative evidence.

The Tribunal has reasonably, and rather liberally, allowed compensation on all the relevant heads. It is noticeable that the Tribunal has not only allowed loss of income at Rs.2,30,000/- with reference to amputation of leg and disablement; but has further allowed Rs.1,00,000/- towards loss of future income with reference to the same amputation. The Tribunal has of course not allowed any separate amount towards loss of amenities of life, but the said amount of Rs.1,00,000/- could only be considered towards such component of non-pecuniary loss.

In the ultimate analysis, there appears no scope for enhancement over the amount of compensation allowed by the Tribunal in the sum of Rs.4,32,000/- together with interest @ 6% per annum from the date of filing of claim application .

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

Mohan/